

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

ERIK THOR TROVE	§	
VS.	§	CIVIL ACTION NO. 1:21cv616
DAVID GUTIERREZ	§	

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Erik Thor Trove, proceeding *pro se*, filed the above-styled civil rights lawsuit pursuant to 42 U.S.C. § 1983 against David Gutierrez. The Court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable orders of this Court.

The defendant filed a motion asking that the case be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(5). The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending that the motion should be granted to the extent that plaintiff's prior attempt to serve the defendant is quashed.

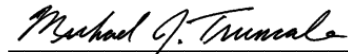
The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the Court is of the opinion the objections are without merit. Plaintiff attempted service by providing a summons and copy of the complaint to a person described as the legal representative for the Texas Department of Criminal Justice. The magistrate judge correctly concluded that this method of service is not authorized by either Federal Rule of Civil Procedure 4 or Texas Rule of Civil Procedure 106. As a result, the defendant has not been properly served. However, the Court agrees that plaintiff should be given another chance to serve the defendant.

ORDER

Accordingly, plaintiff's objections [Dkt. 61] are OVERRULED. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge [Dkt. 58] is ACCEPTED. The motion to dismiss [Dkt. 33] is GRANTED to the extent that plaintiff's prior attempt at service is quashed. The Clerk shall provide plaintiff with a summons and copy of the complaint for the purpose of service. Plaintiff shall have 60 days from receipt of the summons to serve the defendant.

SIGNED this 3rd day of February, 2023.



Michael J. Truncale
United States District Judge